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REFLECTIONS ON THE SYMPOSIUM: AN ORDERED INQUIRY INTO THE RELATION OF CIVIL RIGHTS LAW AND RELIGION*

*William Joseph Wagner***

The Symposium on The Religious Foundations of Civil Rights Law¹ originated in response to an apparent crisis that has emerged in the Nation's understanding of civil rights law. The character of the crisis could be discerned in the exchange on abortion that took place between democratic vice-presidential candidate Geraldine Ferraro and Roman Catholic Archbishop John O'Connor in the 1984 presidential campaign.² Brief mention of this political event provides a useful point of departure for reflection on the symposium.

The exchange between Ferraro and O'Connor caused protracted public debate about the correct relation of religion and politics. The purview of the debate extended to the relation of civil rights and religion, since abortion affected the rights of women and unborn children, and the candidate and the Archbishop had each related religion to these rights. But, as most commentators agreed, the debate did not

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1. Sponsored by the Interdisciplinary Program in Law and Religion, The Columbus School of Law, The Catholic University of America, on April 19-20, 1985. See Destro, Introduction: The Interdisciplinary Program in Law and Religion, 5 J. LAW & RELIG. 3 (1987).

2. O'Connor initiated the exchange, when he criticized Ferraro's position on abortion to reporters at a Pennsylvania Pro-Life Federation convention on Saturday, September 8, 1984. He repeated his criticism in brief remarks after celebrating Mass in St. Patrick's Cathedral on Sunday, September 9, 1984. The Archbishop previously had stated publicly that he did not believe a Catholic in good conscience could vote for a candidate who approved of abortion. Ferraro had cosigned a letter that accompanied material from "Catholics for a Free Choice" addressed to congressional legislators. O'Connor criticized this letter for saying that Catholic teaching on abortion was "not monolithic" and permitted a "range of personal and political responses to the issue." Ferraro responded with a telephone call to the Archbishop on Sunday, September 9, 1984. She was still responding to the Archbishop in the vice-presidential debate with George Bush on Thursday, October 11, 1984. N.Y. Times, Sept. 9, 1984, at 1, col. 3; Sept. 10, 1984, at 1, col. 5; Sept. 11, at 1, col. 3; and Oct. 13, at 8, col. 4. O'Connor has subsequently been elevated to cardinal. N.Y. Times, April 25, 1985, at 1, col. 1.

shed appreciable light on the meaning or validity of civil rights law, nor did it notably elucidate the relation of civil rights and religion.³

The public response to the Ferraro-O'Connor exchange exemplified a critical degree of division and uncertainty in the current American understanding of the meaning and value of civil rights law. In one sense, this debate exposed a crisis involving the whole of American constitutional and statutory civil rights. In a more particular way the crisis that was revealed affects those civil liberties and entitlements affirmed by the Supreme Court in the 1950s and 1960s,⁴ as well as those enacted by Congress in the Civil Rights Act of 1964 and in related legislation.⁵

Virtually all regard these latter developments as a decisive advance that ought to give direction to the Nation's law and policy.⁶

3. For an excellent commentary on the debate, see *Politics, Religion and the 1984 Campaign*, 44 CHRISTIANITY AND CRISIS 391-406 (1984) (a symposium). The symposium's six short pieces include: Bellah, *Toward Clarity in the Midst of Conflict*, *id.* at 391-94; Bettenhausen, *Personal and Political, Private and Public*, *id.* at 394-96; Bennett, *Partisanship and Piety: Rights and Restraints*, *id.* at 397-99; Elshtein, *Muddled Language Makes for Wearing Debate*, *id.* at 399-401; Lekachman, *An Agnostic's Advice: Keep the Rules*, *id.* at 401-04; Surlis, *Is Religion the Only Basis for Morality?*, *id.* at 404-06. A central theme in this collection is the unsatisfactory level of the public discussion. As Robert Bellah states,

[t]he most significant fact about the debate over religion and politics in the 1984 presidential campaign is its intensity. After over 200 years of the Constitutional separation of church and state in America, that intensity is telling us something, *even if the content of the debate on the whole is not telling us much.*

Id. at 391 (emphasis added). Elizabeth Bettenhausen concurs, stating:

Ring[ing] the changes on religion and politics, morality and social policy, personal belief and public responsibility, church and state is, in this election year, as *deafening* and nearly as *deadening* as it was the for the unsuspecting in Dorothy Sayers' *The Nine Tailors*. This peal of catchwords from sundry ecclesial and political belfries is best heard from a distance. . . .

Id. at 394 (emphasis added).

4. The period of Supreme Court jurisprudence in question corresponds more or less with the Warren Court (1953 to 1969). Clearly, the most significant civil rights opinion issued during the period was *Brown v. Board of Education*, 347 U.S. 483 (1954). The crisis in understanding rights at issue here has been accompanied by an intensified debate over norms of constitutional interpretation. For a general discussion, see J. ELY, *DEMOCRACY AND DISTRICT: A THEORY OF JUDICIAL REVIEW* 1-72 (1980).

5. 28 U.S.C. § 1447, 42 U.S.C. §§ 1971, 1975 *et seq.* 2000a *et seq.* Richard John Neuhaus concurs that the legal developments of the late 1950's and early 1960's are implicated in a special way in the current crisis. He calls this period the "base line" in our thinking about civil rights. Neuhaus, *Nililism Without the Abyss: Law, Rights, and Transcendent Good*, 5 J. LAW & RELIG. 61 (1987).

6. This was illustrated with a certain poignancy in the confirmation hearings on William Rehnquist's appointment as Chief Justice. While a law clerk to Justice Robert H. Jackson in 1952-53, Rehnquist had written a memorandum entitled "A Random Thought on the Segregation Cases" which emphatically supported the "separate but equal" doctrine of *Plessy v. Ferguson*, 163 U.S. 537 (1896). When the memorandum was brought to his attention, Rehnquist responded that "his best recollection was that the memo was prepared at Jackson's request for a conference with the other justices and that it reflected Jackson's views, *not his own*" (empha-

The Ferraro-O'Connor controversy, however, revealed profound disagreement on what is the irreversible portion of the development, why that portion represents an advance, and what direction civil rights law ought now to have.⁷ In the political struggle to fix the law's direction, the perennial clash of interests can be observed, but so too can a real contest of ideas. The public discussion of ideas remains unsatisfactory even at its most disinterested and best informed, as the discussion associated with the Ferraro and O'Connor debate showed.

Fundamentally, the discussion is unsatisfactory, because it is conducted without an adequate frame of reference for specifying the meaning and validity of civil rights law. Public discourse on civil rights would be more satisfactory if it were oriented in a more systematic manner to existing theoretical horizons.⁸ Inquiry that attempted to specify the meaning and validity of civil rights law in relation to the horizons of politics, history, or morality would be beneficial. The results of such efforts would assist in resolving, or at least clarifying, critical areas of public disagreement.

Particular justification exists, at present, for inquiry into religion as one horizon, among others, of the meaning and validity of civil rights law. In the public discussion associated with the Ferraro and O'Connor debate, intrinsic points of connection between religion and rights were often overlooked. Frequently, religion was viewed as an extrinsic element in random collision with the challenges of political decision-making about rights.⁹ Systematic inquiry into religion as a horizon of the meaning of civil rights law could be expected to uncover and develop such intrinsic connections, with the consequence that a more productive understanding might emerge concerning the relation between religion and political decision-making about civil rights law.

sis added). Wash. Post, July 20, 1986, at 1, col. 5. Jackson's personal secretary, Elsie Douglas, emerged from retirement to contest Rehnquist's explanation, saying that Jackson did not ask his clerks to express his views and that Rehnquist had smeared the reputation of a great man. N.Y. Times, Aug. 11, 1986, at 14, col. 6. Regardless of whom one believes, the incident shows that a disavowal of *Brown v. Board of Education*, *supra* note 4, is now a "smear" no one can publicly endure.

7. The focal point of this disagreement is *Roe v. Wade*, 410 U.S. 113 (1973). See, e.g., Neuhaus, *supra* note 5, at 4-8.

8. I assume that the meaning and validity of the law must be grounded in relation to some nonlegal reality to which I refer throughout my paper somewhat interchangeably as "horizon," "ground," and "foundation." This assumption is itself the threshold to important questions of semantics and hermeneutics which, however, are not directly the topic of the symposium. See, e.g., R. DWORKIN, *LAW'S EMPIRE* 1-86 (1986).

9. The principle of separation of church and state unfortunately is not infrequently used to justify the exclusion of religion from political discussion, as well as from state action.

There is an historical warrant for exploring religion as a special horizon of the meaning and validity of American civil rights law. Religion contributed to the renewal of civil rights law during the 1950's and 1960's, a contribution to which the national memory of Dr. Martin Luther King, Jr., gives eloquent witness.¹⁰ As a more abstract anthropological warrant, there is also religion's intrinsic tendency to seek a unified account of moral experience.¹¹ Recent civil rights law is considered morally significant, so that religion seeks to fit such development into its comprehensive view. Most Americans, in fact, consider themselves religious.¹² By pursuing the moral significance of civil rights law, religion assists these citizens to assimilate and follow the law.

I. THE SYMPOSIUM

The Symposium on the Religious Foundations of Civil Rights Law addressed the two critical needs revealed in recent public discussion. The symposium sought to contribute to a theoretical framework for coherent discourse on civil rights law. It did so by relating civil rights to the religious dimension of human experience. In a theoretical manner, the symposium explored religion's role as an explanatory ground of civil rights law.

If it was to avoid confusion characterizing recent debate on civil rights and religion, the project required the definition of a coherent field for discussion. Such definition was provided by the general ques-

10. Dr. Martin Luther King, Jr., who founded the Southern Christian Leadership Conference in 1956, was an ordained Baptist minister. *ENCYCLOPEDIC DICTIONARY OF RELIGION* 1986 (1978). King's religious philosophy is described in his book *STRENGTH TO LOVE* (1963). On November 2, 1983, President Reagan signed Public Law 98-144, making the birthday of Martin Luther King, Jr. a holiday. The day was first celebrated as a national holiday on January 20, 1986.

11. Paul Tillich, for instance, has described religion as:
at home . . . in the depth of all functions of man's spiritual life. Religion is the aspect of depth in the totality of human spirit. What does the metaphor of *depth* mean? It means that the religious aspect points to that which is ultimate, infinite, unconditional in man's spiritual life. Religion, in the largest and most basic sense of the word, is ultimate concern. And ultimate concern is manifest in all creative functions of the human spirit. It is manifest in the moral sphere as the unconditional seriousness of the moral demand.

P. TILlich, *THEOLOGY OF CULTURE* 7-8 (1959). Tillich's definition of religion was cited by the Supreme Court in *U.S. v. Seeger*, 380 U.S. 163, 180 (1965).

12. According to Gallup, 91% of Americans currently state a religious preference, 68% say they are members of a church or synagogue, 65% express a "great deal or quite a lot of" confidence in the church or organized religion, and 56% say religion is "very important" in their lives. The proportion of Americans who see religion as *increasing* its influence has trebled since 1969 and is now at 48%. G. GALLUP, JR., *THE GALLUP POLL: PUBLIC OPINION* 1986 120-21 (1986).

tion proposed for discussion and by the symposium's interdisciplinary frame of reference. Comment on these elements that established the scope and direction of the symposium inquiry is an appropriate prelude to consideration of the thematic patterns that crystallized in the contributions of the symposium participants.

Participants were asked to contribute papers that responded to the following general question:

The civil rights laws enacted by the United States Congress over the past 20 years represent one of the more morally ambitious projects in the history of American law. The enactment of these laws has been viewed as a signal that the nation has entered a new phase of moral consciousness. Yet paradoxically, consensus is lacking about the source, or sources, of the meaning and validity of these laws. Consequently, the future direction of American civil rights law is uncertain.

The Symposium on the Religious Foundations of Civil Rights Law will explore the role of religion as one source of the meaning and validity of civil rights law.¹³

Fundamentally, this formulation bounds its field by presupposing that the law's meaning and validity requires grounding in an extralegal source. To this extent, the symposium bracketed positivist viewpoints.¹⁴ The formulation further defines its field by further presupposing that religion can serve, if only in some attenuated sense, as such a source of meaning and validity. In so assuming, the symposium bracketed positions holding that religion is in principle not suited to this role, e.g., the position that religion is a private preference unrelated to the public meaning of civil rights.¹⁵ The formulation presupposes, finally, that religion and civil rights law comprise distinct realities and that religion is not the only source of the law's meaning or validity. As a result, the symposium was not receptive to viewpoints holding that religion is a concept that can subsume civil rights or the law.¹⁶

13. This question for discussion was included in the original invitation sent to participating scholars, the announcement sent to the members of local university faculties who composed the symposium's audience, and the brochure distributed at the symposium.

14. E.g., H. KELSEN, *PURE THEORY OF LAW* 1-69 (1967). While the question as formulated leaves room for discussion with the form of positivism adopted by H.L.A. Hart, Hart and his followers would probably not find a wide range for meaningful analysis within this formulation. See H.L.A. HART, *THE CONCEPT OF LAW* 187-207 (1961).

15. This viewpoint frequently encountered in the contemporary public discussion helps account for the impasse in the debate. For a treatment of the source and meaning of this trend toward the privatization of religion, see R. NEUHAUS, *THE NAKED PUBLIC SQUARE* (1984).

16. This, too, is a viewpoint encountered with some frequency in the public discussion, most often among evangelical and fundamentalist Protestants. It once characterized Puritan

Aside from the formulation of the question, the symposium took its principal element of structure from an interdisciplinary framework. As the symposium brochure stated, "This enormously complex question intersects with several academic fields: as a result, the symposium calls upon the resources of law, philosophy, theology, and history." Underlying this conscious choice of an interdisciplinary approach was the conviction that much of the heat and confusion of the contemporary debate arises from inadequate differentiation of the kinds of questions at issue that require answers. The symposium sought to achieve the appropriate level of differentiation in its inquiry, by enlisting the methodologies and perspectives of several disciplines and by inviting each discipline to account for its approach vis-a-vis the critical judgment of the others.

In arranging this framework, it seemed essential that a number of participants be legal scholars. Participating legal scholars included Harold Berman, John Noonan, and Robert Cover.¹⁷ As representatives of nonlegal disciplines, thinkers were selected who had demonstrated ability to treat legal problems. Either legal scholarship or, at a minimum, conversance with legal problems was a criterion for selection of all the participants in order to preserve the symposium's operative premise that civil rights law is not subsumable into religion.

It was also clearly not possible to proceed without the assistance of philosophy, both to clarify criteria of meaning and validity within the larger interdisciplinary discussion and to give a substantive response to the question being addressed. The philosophers invited had done significant work on the philosophical grounding of rights. They were chosen to represent two divergent approaches: Jude Dougherty, Dean of the School of Philosophy at CUA, relates rights to the Western religious tradition, while Alan Gewirth, E.C. Waller Distinguished Service Professor at the University of Chicago, pursues a theory of the moral foundations of civil rights apart from express reference to religion.

thought on law, since the Puritans saw the Pentateuch as a comprehensive source of civil law. G.L. HASKINS, *LAW AND AUTHORITY IN EARLY MASSACHUSETTS* 141-62 (1960). However, as Harold Berman notes, the relative autonomy of law has been seen as a fundamental postulate of Western legal systems dating to the twelfth century or earlier. Berman, *Conscience and Law: The Lutheran Reformation and the Western Legal Tradition*, 5 J. LAW & RELIG. 177 (1987).

17. In arranging the discussion, we also recognized Harold Berman and John Noonan as historians. We asked Robert Cover to represent a particular theological perspective. In fact, all eight participating scholars were versatile thinkers with expertise in several of the relevant fields.

History, too, was an indispensable element in the symposium's inquiry, offering assistance in uncovering religious values, beliefs, or convictions associated with the origin of legal and other societal institutions. This discipline also promised help in understanding relevant aspects of religion's inherent tendency to understand itself as tradition. The historians invited were selected for outstanding past work correlating law and religion within a historical framework. They included Brian Tierney, Harold Berman, and John Noonan.

The final discipline, theology,¹⁸ ensured a systematic account of the relationship between civil rights and religion, from religion's perspective. Because the symposium addressed American civil rights law, and not human rights in the abstract, theological perspectives were selected from among traditions significant within American experience, rather than from among all religious options. Perspectives represented at the symposium included Protestantism, Judaism, and Catholicism. Participating theologians were chosen, at least in part, for their conscious link to one of these three traditions. They included Richard John Neuhaus, who is a Lutheran; Robert Cover, who is a Jew; and Lisa Cahill, who is a Catholic.

In general, the symposium's framework for discussion tracked the multivalent lines of academic discipline, religious persuasion, and intellectual focus. A danger of such deliberate use of definition and structure is overschematization, with a consequent exclusion of creative insight. In order to avoid such an outcome, participation was extended only to scholars of irrepressible originality. Their originality, more than the symposium's structure, accounts for the symposium's quality.

The symposium aimed to spark spontaneous interdisciplinary exchange, in addition to offering a forum for the delivery of papers. Time, therefore, was arranged for panel discussions¹⁹ and for small group seminars on ancillary topics. (A list of seminar topics and the format suggested for their consideration is appended at the close of these reflections.)²⁰ Very engaging colloquies occurred during the panels and seminars, and these continued late into the evenings at the scholars' lodgings at The Dominican House of Studies, across Michi-

18. We had hoped to include sociology as a fifth discipline, but were unable to arrange it. In retrospect, another discipline would have overtaxed the structure of the already complex discussion.

19. The texts of these panels are included below. 5 J. LAW & RELIG. 95, 149, 213, and 225 (1987).

20. I would like to thank Professor Benjamin Mintz for his editorial advice in the phrasing of these questions.

gan Avenue from CUA.²¹ There was no way to record them, but these informal late-evening talks were captivating.

II. THE CONTOURS OF THE DISCUSSION

The papers and panels of the symposium merit individual study, but if the systematic goal of the symposium is to be attained, the contours of the collection as a whole must also be charted. Analytically, this requires that the participants' lines of inquiry be expressly related to the fundamental question raised by the symposium and that the patterns in the collection as a whole be evaluated for its unifying themes. As the distillation of discussion among scholars highly respected in the field, these themes not only answer the question raised by the symposium; they are of particular heuristic value in establishing directions for further investigation.

When analyzed in relation to the question raised by the symposium, the participants' diverse lines of inquiry revolve around five specific themes. These are: a) the nature and source of the basic problem; b) religion as the horizon of the law's meaning and validity; c) religion as the ground from which to criticize the law; d) the need for mediation between law and religion; and e) the special problem of religious liberty. The contours of the symposium discussion come clearly into view when the remarks of the participants are considered with reference to these themes. Such contours suggest direction for investigation that will contribute to a more coherent framework for public debate on the meaning and validity of civil rights law.

A. The Nature and Source of the Basic Problem

In the course of the symposium, all participants acknowledge that the inherent problem of grounding the law's obligatory character is the fundamental problem in interpreting civil rights law. They consider more particular points of interpretation to follow from how the law is grounded in this fundamental sense; and they explore, from a variety of thematic perspectives, the significance of religion for resolving this challenge. *See especially Section C below.*

In this connection, all the scholars adopt, as their starting point, the premise that civil rights law requires validation by reference to

21. The warm and generous hospitality and the beautiful daily liturgy provided by Prior Charles Farrell and the friars of the Dominican House of Studies greatly enhanced the symposium. I would like to acknowledge personally also the assistance, with many practical details, provided by Bart de la Torre, Stephen Hayes, and Greg Rocca.

some law-transcending reality, whether it be conceived as moral, metaphysical or religious in nature. In the opening paper of the symposium, Richard Neuhaus proposes this express premise as the correct point of departure for public discourse on the topic of civil rights generally.²² From a philosophical perspective, Alan Gewirth develops the same notion, although he further specifies that the validating ground of civil rights law is a morality based in human reason.²³ The remaining scholars presuppose Neuhaus and Gewirth's broader premise, even if they do not necessarily agree with either Gewirth or Neuhaus' conclusions about where law's law-transcending ground is to be located, or about precisely how that ground is related to religion.²⁴

Most, or even all, of the participants agree that the resolution of this fundamental question is especially problematic in contemporary public discourse. The problem stems not merely from the lack of a common framework, mentioned in the introduction above, but from pervasive unconcern with the fundamental challenge of justifying the law's obligatory character.²⁵ However, only Richard Neuhaus and Jude Dougherty directly explore the problematic nature of the contemporary situation.²⁶ No participant denies that the situation is

22. Neuhaus, *supra* note 5, at 1-3.

23. Gewirth, *Moral Foundations of Civil Rights Law*, 5 J. LAW & RELIG. 128-31 (1987).

24. Berman, *supra* note 16, at 201-202; Cahill, *The Catholic Tradition: Religion, Morality, and the Common Good*, 5 J. LAW & RELIG. 75, 77 (1987); *Theological Perspectives: Concluding Panel Discussion*, 5 J. LAW & RELIG. 105-106 (1987) [hereinafter *Theological Perspectives*] (Remarks of L. Cahill); Cover, *Obligation: A Jewish Jurisprudence of the Social Order*, 5 J. LAW & RELIG. 66 (1987); Dougherty, *Puritan Aspiration: Puritan Legacy—An Historical/Philosophical Inquiry*, 5 J. LAW & RELIG. 121-23 (1987); *Final Panel Discussion*, 5 J. LAW & RELIG. 239 (1987) (Remarks of J. Dougherty); Noonan, *Principled or Pragmatic Foundations for Freedom of Conscience?*, 5 J. LAW & RELIG. 212 (1987); *Final Panel Discussion*, 5 J. LAW & RELIG. 237 (1987) (Remarks of P. Noonan); and Tierney, *Religion and Rights: A Medieval Perspective*, 5 J. LAW & RELIG. 163 (1987).

25. Harold Berman does not deal expressly with this problem in his present paper, but he appears to presuppose it. See H. BERMAN, *LAW AND REVOLUTION: THE FORMATION OF WESTERN LEGAL TRADITION* v. 33 (1983); Lisa Cahill and Robert Cover sat on a panel with Richard John Neuhaus, and challenged him on various points, but neither questioned Neuhaus' fundamental claim that such a problem exists. See *Theological Perspectives*, *supra* note 24, at 95-108; Alan Gewirth does not acknowledge such a problem in so many words, but he sees it was necessary to justify the justificatory primacy of morality. Gewirth, *supra* note 23, at 125, 128-31; John Noonan stresses the failures of post-enlightenment moral philosophy and, thus, indirectly alludes to the problem. *Final Panel Discussion*, *supra* note 24, at 237-38; and Brian Tierney sat on the final panel without challenging Neuhaus or Dougherty's claim, although Tierney was willing to make direct challenges at other times. Compare *Final Panel Discussion*, *supra* note 24, at 225-47; *Historical Perspectives: Concluding Panel Discussion*, 5 J. LAW & RELIG. 213-24 (1987) [hereinafter *Historical Perspectives*] (Remarks of B. Tierney); and *Philosophical Perspectives: Concluding Panel Discussion*, 5 J. LAW & RELIG. 152-53 (1987) [hereinafter *Philosophical Perspectives*] (Remarks of B. Tierney).

26. Neuhaus, *supra* note 5, at 53-60; Dougherty, *supra* note 24, at 109-120.

problematic, but some appear implicitly to differ from Neuhaus and Dougherty in their attitude towards it. In respect to this question, one group of participants is relatively "pessimistic," and another "optimistic."²⁷

Neuhaus and Dougherty belong to the group expressing the greater concern over both the extent and intractability of the problem. Harold Berman also seems to be a member of this more pessimistic group, as evidenced by his concern over the loss of continuity contemporary legal institutions have experienced in relation to the animating moral tradition of the West.²⁸ In a sense, Robert Cover, too, has a more pessimistic outlook, for he considers the power of the state to be a kind of sanctioned violence which is necessarily morally ambiguous.²⁹ Yet, this assessment of Cover must be qualified. Neuhaus, Dougherty, and Berman ascribe the immediate cause of the problem to a departure from an existing moral and political tradition, while Cover's pessimism seems to flow from the recognition of basic paradoxes in the human condition.³⁰

A second group of scholars displays, by contrast, relatively more optimism towards the extent and expected difficulty of the alleged problem. Such optimism is apparent, for instance, in Lisa Cahill's willingness to explore whether an existing consensus on the political good could not contribute to resolving the fundamental interpretive problem of civil rights law.³¹ It is apparent also in Cahill's openness to Rawls, inasfar as Rawls can be viewed as theoretical exponent of an existing liberal consensus.³² This participant correctly stresses the op-

27. I designate participants as relatively optimistic or pessimistic based on their remarks at the symposium. This is not a claim about the general tenor of any participant's work, but merely a convenient benchmark for charting the contours of the present discussion.

28. This concern is implicit in Professor Berman's present paper. He explicitly develops the nature of his concern elsewhere, in the following terms:

That the Western legal tradition, like Western civilization as a whole, is undergoing in the twentieth century a crisis greater than it has ever known before is not something that can be proved scientifically. It is something that is known, ultimately, by intuition. I can only testify, so to speak, that I sense that we are in the midst of an unprecedented crisis of legal values and of legal thought, in which our entire legal tradition is being challenged—not only the so-called liberal concepts of the past few hundred years, but the very structure of Western legality, which dates from the eleventh and twelfth centuries.

Berman, *supra* note 16, at 33.

29. *Theological Perspectives*, *supra* note 24, at 106 (Remarks of R. Cover).

30. *Id.* at 106; Cover, *supra* note 24, at 69.

31. Cahill, *supra* note 24, at 76; *Theological Perspectives*, *supra* note 24, at 96 (Remarks of L. Cahill).

32. *Theological Perspectives*, *supra* note 24, at 96 (Remarks of L. Cahill).

timistic quality of Thomism,³³ and her own optimism reflects continuity with that tradition.

Alan Gewirth is also an optimist, as is apparent from his assertion that law's moral legitimization may be accomplished through principles accessible to reason, independent of particular religious traditions.³⁴ Similarly, Brian Tierney's dual affirmation of the value of experience and the capacity of Christianity to assimilate non-Christian thought identifies him as an optimist.³⁵ As a relative matter, John Noonan belongs in the same group, based on his confidence that a flourishing human society can be ordered from the starting point of absolute liberty of religious belief.³⁶

When an attempt is made to generalize about the agenda of either group in relation to the moral grounding of legal rights, it becomes clear that no one description fully accounts for the commitments and approaches of all the participants included within it. Yet, generalizations are available that can account for the broader characteristics of both groups, even if they are not equally applicable in all respects to individual members. The agenda of the "pessimists" can be generalized, for example, as one of retrieval and development of a particular contingent, historical tradition in philosophy and religion. The tradition in question in some sense appears to be connected to Judeo-Christian revelation. This approach makes fidelity to the fundamental commitments of the tradition a primary value. In some instances, the pessimism which has been noted flows from finding that society has chosen to break faith with the tradition, and must reverse its infidelity if progress is to occur. In other cases, pessimism follows from the intrinsic paradox of the fallen human situation in which the use of power always remains morally ambiguous. In either event, there is an implicit acknowledgement of sin or moral finitude as a dimension of the human situation.

The agenda of the "optimists" is, by contrast, one of advancing recognition of the capacity of human reason to discover and implement the requirements of justice and morality. Present societal depar-

33. *Id.* at 106.

34. *Philosophical Perspectives*, *supra* note 25, at 153-54 (Remarks of A. Gewirth); Gewirth, *supra* note 23, at 131-35.

35. *Historical Perspectives*, *supra* note 24, at 222 (Remarks of B. Tierney); *Final Panel Discussion*, *supra* note 24, at 232-33 (Remarks of B. Tierney). Since I place Tierney among the optimists, I do not take him entirely at face value when he says that human depravity explains the decline of civilizations. *Final Panel Discussion*, *supra* note 24, at 228.

36. Noonan, *supra* note 24, at 212; *Historical Perspectives*, *supra* note 25, at 221 (Remarks of J. Noonan).

tures from such requirements are essentially accidental and do not signify the loss of anything that reason does not have the capacity to recover. This approach makes open-minded reasonableness a primary value. Optimism follows from conviction that reason is reliable and human nature is fundamentally good. Noting the existence of these two broadly divergent agendas, corresponding very roughly to the distinction between Augustinian and Thomistic positions in the history of Christian philosophy, is of assistance in evaluating differing perspectives in the contemporary discussion of law and religion. These opposing perspectives offer somewhat contradictory interpretations of the facts of the present situation.

Although they ultimately propose a different interpretation of the situation,³⁷ the optimists among the participants, as was noted above, concede the situation's essentially problematic nature. Neuhaus and Dougherty, two members of the pessimist camp, give an account of the nature and genesis of the situation.³⁸ Their methodologies differ, but their conclusions are mutually confirmatory. The optimistic participants do not take issue with their account. The account given by Neuhaus and Dougherty provides one of the pivotal points of general orientation in the symposium discussion.

Dougherty and Neuhaus hypothesize that the disintegration of the "Puritan-Lockean" synthesis is the proximate cause of present difficulties.³⁹ They argue that this synthesis, which they consider a particular instantiation of the larger Western moral tradition, at one time supported the political and moral structures of American society, by allowing Protestant values of predominantly Calvinist provenance to provide what Dougherty terms "pre-democratic strata of values and institutions which alone make political freedom possible."⁴⁰ They suggest that religious values were allowed to fill this role under a generally accepted Lockean understanding of the political structure.⁴¹ Although it is difficult for some now even to imagine such a synthesis, John Noonan observes that Locke was in a sense a Protestant theolo-

37. More optimistic interpretations of the situation may either see greater value in alternative philosophies that have gained currency in the recent past, or may emphasize the human capacity for creating new forms of thought that will allow civilization to transcend its present crisis.

38. Neuhaus, *supra* note 5, at 53-63; Dougherty, *supra* note 24, at 109-123.

39. Neuhaus, *supra* note 5, at 59 (citing M. STACKHOUSE, CREEDS, SOCIETY, AND HUMAN RIGHTS (1984); Dougherty, *supra* note 24, at 112 and 114 (Dougherty is somewhat cautious about the degree to which Calvinism prevailed over other Protestant creeds in shaping the American synthesis).

40. Dougherty, *supra* note 24, at 117 (citing R. Nisbet).

41. Neuhaus, *supra* note 5, at 59; Dougherty, *supra* note 24, at 115.

gian who employed philosophical categories.⁴² While it lasted, the synthesis was perceived as natural.

Dougherty and Neuhaus conclude that a dissolution of the synthesis began affecting legal structures in the United States earlier in the present century.⁴³ They hold that the synthesis has residual force in inherited laws, but perceive that this force is weakening. Each, in his own way, cautions that when the process is complete, society may face a moral "abyss".⁴⁴ Neuhaus, in particular, warns of an impending dark age, in which the law may sanction profound moral evils. According to Neuhaus, legalized abortion may presage other morally objectionable legalizations.⁴⁵

Concepts Harold Berman develops in a separate context are helpful in elucidating the meaning of the breakdown discerned by Neuhaus and Dougherty. As Dougherty notes, certain elements in the Lockean-Puritan synthesis were, in their inception, revolutionary.⁴⁶ In Berman's model, the dissolution of this synthesis, after 200 years of sustaining the American political and moral imagination, can be seen as the failure of a "revolution." In Berman's terms, society's refusal to renew the law by returning to a deeper religious belief system is a significant secondary failure. This latter failure differs strikingly from the renewal of legal institutions Berman sees in the Protestant Reformation and its response to the final disintegration of the Gregorian reform.⁴⁷

Dougherty and Neuhaus attribute society's failure to renew the law in relation to a deeper belief system to the European and American philosophy of the past century and a half and more.⁴⁸ They see a cause in the inherent weakness in the Lockean idea of social contract, with its tendency towards unadorned majoritarianism.⁴⁹ They trace the failure also to more recent philosophical developments, notably in this country the influential philosophy of John Dewey.⁵⁰

As another source of the failure, Richard Neuhaus cites an ideology, which he terms "naturalistic scientism," and which he asserts elite groups in American society had adopted by the early part of the

42. *Final Panel Discussion*, *supra* note 24, at 237-38 (Remarks of J. Noonan).

43. Neuhaus, *supra* note 5, at 59; Dougherty, *supra* note 24, at 114.

44. Neuhaus, *supra* note 5, at 56; Dougherty, *supra* note 24, at 122.

45. Neuhaus, *supra* note 5, at 56.

46. Dougherty, *supra* note 24, at 113 (Dougherty uses the word "heresy").

47. Berman, *supra* note 16, at 186-202.

48. Neuhaus, *supra* note 5, at 59-60; Dougherty, *supra* note 24, at 115-20.

49. Dougherty, *supra* note 24, at 119, 121; Neuhaus, *supra* note 5, at 59.

50. Neuhaus, *supra* note 5, at 60; Dougherty, *supra* note 24, at 116.

century. He credits the rise of this ideology to trends in philosophy and, indirectly, to science. It has, he concludes, interfered with renewal in the moral and religious grounding of law particularly through its influence on the judiciary.⁵¹ John Noonan in essence confirms this impact of an elite ideology on the judiciary.⁵² Associated with this ideology and its effect on the courts are the jurisprudential schools of legal positivism and legal realism which understand law more in terms of power and interests, than of morality and justice.⁵³

To summarize, the symposium participants pursue their inquiry into the religious foundations of civil rights with an awareness that in so doing they are responding to the intrinsic problem of grounding the law's obligatory character. To one degree or another, they are also aware of responding to a contingent, historical problem that makes the intrinsic interpretive problem more difficult. Neuhaus and Dougherty concentrate on documenting this contingent, historical problem. They and their colleagues in the more pessimistic camp tend to interpret the situation as calling for a return to fidelity to basic commitments. Their optimistic discussion partners tend, by contrast, to interpret the situation as calling for a turn to open-minded reasonableness.

B. Religion as a Horizon of the Civil Rights Law's Meaning and Validity

Rather than explore the nature and dimensions of the problem at length, most participants direct their attention to investigating how religion can function as the needed horizon of the law's meaning and validity. Such participants establish that religion can be said to fulfill this purpose in several distinct ways. It is proposed by one or more of them that religion is an explanatory ground of *each* of the following aspects of civil rights law: 1) origin of civil rights concepts; 2) obligatory character of the law; 3) purposes of the law; 4) means of transmitting essential ideas and values; and 5) satisfaction of the law's sociological and political preconditions. The paragraphs following

51. Neuhaus, *supra* note 5, at 55-58 and 60.

52. *Final Panel Discussion*, *supra* note 24, at 240 (Remarks of J. Noonan).

53. Neuhaus, *supra* note 5, at 60 (Regarding legal realism) and at 61 (Regarding legal positivism). Neuhaus and Dougherty criticize the judiciary for having attacked the moral values residing in mediating social structures under the influence of this ideology, especially during the past forty years. Neuhaus, *supra* note 5, at 55-58 and 61-62 and Dougherty, *supra* note 24, at 114 and 122. Curiously enough, the courts are also said to have contributed during this same period to an authentic moral renewal of civil rights. It would be interesting to explore this paradox further elsewhere.

are devoted to an analysis of the roles participants ascribe to religion in grounding the meaning and validity of the law in each of these several aspects.

1. The Religious Origin of Civil Rights Concepts

Several participants advance the thesis that religion assists in explaining the origin of basic concepts that inform contemporary civil rights law.⁵⁴ They assert that such concepts came into being within the context of religious thought or experience at several historical junctures. The sequence of these historical moments may be pieced together synthetically, to arrive at a history of more or less continuous influence by religion in the formation of decisive civil rights concepts.

In the earliest of these moments, Brian Tierney and Harold Berman credit the emergence of the conceptual basis of modern civil rights law to the rise of Western legal institutions in the Catholic Middle Ages.⁵⁵ Each maintains that the present law of civil rights owes some of its central ideas to this older religious civilization. Tierney, in particular, uses his present paper to support and develop this thesis through more specific historical claims regarding several phenomena of the Christian twelfth century.⁵⁶

According to Tierney, the twelfth century witnessed the emergence of juridical recognition of church and state dualism. By preventing totalitarianism of church or state, such dualism created a kind of "space" within which rights were acknowledged.⁵⁷ He traces this reciprocal relativization of church and state to ideas found in the documents of early Christianity.⁵⁸ He hypothesizes that this early Christian relativization of the state was creatively applied in the entirely different setting of the twelfth century to justify the church-state dualism that ultimately made possible the recognition of individual rights.⁵⁹

Another twelfth century phenomenon Tierney explores for its causal relation to the emergence of rights concepts is Christian personalism reflected in the juridical forms of the time.⁶⁰ As evidence of personalism, he cites the use by twelfth century canonists of right

54. Berman, *supra* note 16, at 177-202; Noonan, *supra* note 24, at 203-12; and Tierney, *supra* note 24, at 163-75.

55. Berman, *supra* note 16, at 177; Tierney, *supra* note 24, at 163.

56. Tierney, *supra* note 24, at 163-64.

57. *Id.* at 166-69.

58. Tierney, *supra* note 24, at 166-67; *Final Panel Discussion*, *supra* note 24, at 228-29.

59. Tierney, *supra* note 24, at 166-67.

60. *Id.* at 164-66.

(*ius*) to mean faculty of the person rather than relation of justice between or among persons.⁶¹ Others previously have laid considerable theoretical weight to the contrary, that the concept of right as faculty of the person arose later, when medieval civilization was disintegrating or was past.⁶² If Tierney is correct, the continuity between medieval thought and modern rights talk is significantly greater than had been supposed. This historical observation is of singular importance.

Finally, Tierney relates the twelfth century sense of corporate identity to the rise of rights concepts.⁶³ The medieval period, in contrast to modernity, is said to emphasize the community over the individual person. Somewhat paradoxically, Tierney develops that it was precisely the juridical recognition of rights and privileges of *corporate* social entities that underlies such a milepost in the history of modern rights concepts such as the *Magna Carta*.⁶⁴ According to Tierney, juridical checks and balances among corporate entities yielded concrete protections and entitlements exercised even at the time, in the concrete instance, by individual persons. In this regard, a twelfth century religious phenomenon again helps explain the origin of rights concepts.

Just as Tierney examines the relationship between religion and rights concepts in the twelfth century, Harold Berman in his paper studies this relationship in the sixteenth century.⁶⁵ Tierney refers to medieval canonists like Huguccio (c. 1190) to illustrate his thesis.⁶⁶ To illustrate his, Berman refers to the Lutheran jurist Johann Oldendorp (c. 1480-1567).⁶⁷ Berman's thesis is that Reformation religion assists in explaining the origin of concepts underlying modern day civil rights law.

Berman shows that Oldendorp's distinctively Lutheran ideas fundamentally relativized the right of the state and of the law to exercise power over the person.⁶⁸ This relativization is very like that which Tierney sees in the church-state dualism of the twelfth century. In the Reformation context, Berman ties this relativization to new notions of supremacy of individual conscience, primacy of Scripture, and fundamental fairness (*Aequitas* or *Billigkeit*) required in the ad-

61. *Id.* at 166.

62. *Id.* at 165.

63. *Id.* at 169-74.

64. *Id.* at 172-74.

65. Berman, *supra* note 16, at 177-202.

66. Tierney, *supra* note 24, at 166.

67. Berman, *supra* note 16, at 190-202.

68. *Id.* at 194-99.

ministration of justice.⁶⁹ The concepts of freedom of conscience and the accountability of conscience to “higher” sources of obligation continue to support important aspects of modern civil rights law. For this reason, as Berman suggests, they remain relevant in the present.⁷⁰

At a yet more recent historical crossroad, John Noonan explains the emergence of the idea of religious toleration in the seventeenth century by reference to religion.⁷¹ The rise of toleration followed the wars of religion. But, as Noonan describes the evolution of the idea, it was first recognized by *religious* men and women.⁷² Noonan seeks to establish that the religious origin of religious freedom was at times not merely pragmatic, but principled.⁷³ He supports this conclusion using “left-wing” Reformation figures such as Menno Simons (1496-1561)⁷⁴ and, especially, Roger Williams (1603-1683).⁷⁵ Williams argued for state neutrality towards religion on grounds of principle a hundred years before James Madison argued for the first amendment.⁷⁶ Thus, even at the point of greatest historical tension between religion and modern rights thinking, religion is seen by Noonan to give rise, in at least a qualified way, to the rights principle at issue.

As a final historical moment at which civil rights concepts may have emerged from religion, several scholars touch on the American post-war social movement leading to renewal of the civil rights law.⁷⁷ In this context, Dr. Martin Luther King, Jr. is acknowledged as a religious and political leader⁷⁸ who was able to draw on deep religious ideals implicit in American social and political consciousness.⁷⁹ Richard Neuhaus expresses, with characteristic eloquence, what seems a tacit consensus among several scholars, when he says:

King understood the most significant and vibrant symbols of national identity and called the bluff of the American experiment . . . Quite frankly, the promise of Dr. King was almost a momentary flash upon the world historical stage of the redemption, to use his word, of America as some kind of community that is proleptic of

69. *Id.* at 196-201.

70. *Id.* at 201-202.

71. Noonan, *supra* note 24, at 209-210.

72. *Id.*

73. *Id.* at 210.

74. *Historical Perspectives*, *supra* note 25, at 218 (Remarks of J. Noonan).

75. Noonan, *supra* note 24, at 209-210.

76. *Id.* at 209-11.

77. *Final Panel Discussion*, *supra* note 24, at 225-26 (Remarks of J. Neuhaus), at 232 (Remarks of L. Cahill), and at 226 (Remarks of R. Cover).

78. Neuhaus, *supra* note 5, at 70-71; *Final Panel Discussion*, *supra* note 24, at 225-26 (Remarks of J. Neuhaus), at 226 (Remarks of R. Cover), and at 232 (Remarks of L. Cahill).

79. *Final Panel Discussion*, *supra* note 24, at 232 (Remarks of L. Cahill).

the beloved community of Biblical promise.⁸⁰

Yet, the participants extended relatively little effort toward understanding King or the religious movement he led.⁸¹ The cause of this neglect was the breadth of the question with which the participants were presented. The relation between religion and civil rights law in the era of Martin Luther King, Jr., an era Neuhaus terms the "base line" of our thinking on civil rights,⁸² deserves further study.

A review of the symposium texts reveals a sequence of historical moments of the twelfth, sixteenth, seventeenth, and twentieth centuries, in which religion helped give rise to important civil rights concepts. The participants do not seek a general account of the history of religion and rights, but rather present particular historical moments as illustrations of the role religion can play. The accumulation of these moments nonetheless points to a history connecting religion more or less continuously with the origin of the conceptual underpinnings of modern civil rights law. This history ought to be explored further, with the aid of the many relevant publications of participating scholars. One aim of such study should be to account for the antiecclesial, if not antireligious character of some important historical movements concerned with rights.⁸³ See Section E on the problem of religious liberty below.

2. Religion as Ground of the Law's Obligatory Character

The participants also explore how religion grounds civil rights law in a way more strictly theoretical than the explanation of its origins. As noted above, they consider the law's obligatory character to be the basic interpretive problem of civil rights law. The most fundamental claim for religion found in the symposium texts, then, is that religion grounds the obligatory character of civil rights law.

Religion is said by participants to give the law normative force through reference to God. God is several times explicitly mentioned by them, and otherwise remains a frequent implicit point of reference. The idea of God as a source of obligation is expressed in a variety of metaphors. For instance, Robert Cover alludes to God as an ultimate source of light.⁸⁴ John Noonan refers to God as a source of revela-

80. *Id.* at 225-26 (Remarks of J. Neuhaus).

81. *Id.* at 225 (Question from the audience).

82. Neuhaus, *supra* note 5, at 61.

83. Most notably, the French Revolution.

84. Cover, *supra* note 24, at 65.

tion.⁸⁵ Jude Dougherty speaks of God as lawgiver,⁸⁶ while Lisa Cahill calls God the ultimate object of moral obligation.⁸⁷ In theory, each of these metaphors and concepts could be unpacked in the context of the speaker's other remarks, to discover its implications with respect to how its author understands God to ground the obligatory character of human law.

Generally speaking, the symposium encounters aspects of both voluntarist and intellectualist approaches to the question, although the intellectualist approach receives far more emphasis.⁸⁸ An intellectualist perspective on moral obligation can, in fact, be said to have prevailed at the symposium, since virtually all the participants who grounded the law's obligatory character in religion did so by reference not to divine commands, but rather by reference to the human good as *telos* that religion discovers and communicates.

Whatever particular form of conceptualization applies, the symposium's recurrent underlying reference to God significantly transforms and redirects emphases found in the typical secular approach to rights by underscoring human *obligation* rather than human entitlements, privileges, or immunities. Lisa Cahill demonstrates this shift in emphasis, as it is seen in the Catholic framework.⁸⁹ Robert Cover does the same in relation to Judaism.⁹⁰

Although Alan Gewirth justifies law's obligatory character through human reason, he also allows religion a role. According to Gewirth, religion has the effect of motivating people to embrace more fully what reason independently justifies. Indeed, this is the role he assigns religion as opposed to morality in "grounding" civil rights

85. *Final Panel Discussion*, *supra* note 24, at 237-38.

86. Dougherty, *supra* note 24, at 118 (Dougherty does not appear to adopt this image as his own).

87. Cahill, *supra* note 24, at 75; *Theological Perspective*, *supra* note 24, at 105 (Remarks of L. Cahill).

88. By voluntarism I mean approaches to theological ethics that give a primacy to the Divine Will in grounding moral norms. *Voluntarism*, 8 *ENCYCLOPEDIA OF PHILOSOPHY* 270-72 (1967); V. BOURKE, *WILL IN WESTERN THOUGHT* 11-12 (1964). By intellectualism, I mean approaches to theological ethics that give a priority to the Divine Intellect and knowledge of the good in grounding moral norms. *Intellectualism*, *ENCYCLOPEDIA OF RELIGION* 1818 (1978); P. ROUSSELOT, *L'INTELLECTUALISME DE SAINT THOMAS* 201-22 (1935). Although voluntarism has played an important role in the history of both Catholic and Protestant thought (e.g. in the Franciscan tradition and in the Reformers), and although it appears implicit to self-understanding of some forms of contemporary Protestant fundamentalism, this particular group of scholars showed little interest in these strands of Western religious thought.

89. Cahill, *supra* note 24, at 77; *Theological Perspectives*, *supra* note 24, at 105 (Remarks of L. Cahill).

90. Cover, *supra* note 24, at 65-74.

law.⁹¹ Whether in the strong sense espoused by most of the participants or in the weak sense espoused by Gewirth, religion is associated in a special way with the idea of obligation, throughout the symposium texts.

3. Religion as Guide to the Purposes of Civil Rights Law

In connection with the prevailing "intellectualist" approach to grounding the law's obligatory character, a number of participants defend the thesis that religion helps supply the purposes which civil rights law ought to advance. As a result, participants devote a significant degree of attention to religious visions of the good, as well as to the implications of such visions for identifying intrinsic purposes of civil rights law.

According to Lisa Cahill, a primary element in the Catholic vision of the human good is respect for the good of the human person, as the "image of God."⁹² While not employing the same symbol, both Robert Cover and Richard Neuhaus develop essentially the same point from out of Jewish and Lutheran traditions, speaking of a duty to dependent members of the human community.⁹³ Civil rights law is, thus, seen from all these religious perspectives as taking its basic purpose from the idea of the good of human persons.

Attention is devoted to the substantive question of what religion considers necessary to the good of the human person. As Cahill shows, Catholic theology has traditionally attempted to arrive at this content through two distinct, but interlocking sets of rights concepts: one concerned with political freedoms and the other with economic and social benefits.⁹⁴ Intriguingly, this framework corresponds to an extent with the two sets of requirements that follow from Alan Gewirth's Principle of Generic Consistency, i.e., freedom and well being as prerequisites of human agency.⁹⁵

A recurrent theme among the diverse religious perspectives is that the good of the human person is the good of the person in *community*. Harold Berman sums up this theme when he states:

What are we as individuals? We are sons and daughters, we are brothers and sisters, we are parents, we are neighbors, we are students, we are family; we become persons through our relationships

91. *Final Panel Discussion*, *supra* note 24, at 226 (Remarks of A. Gewirth).

92. Cahill, *supra* note 24, at 75.

93. Neuhaus, *supra* note 5, at 55-58; Cover, *supra* note 24, at 71.

94. Cahill, *supra* note 24, at 82-93.

95. Gewirth, *supra* note 23, at 137-44.

with each other in all kinds of communities. The loss of the sense of communities is the greatest threat to both civil rights and religion in the world today.⁹⁶

This communitarian dimension is reflected in Gewirth's and Cahill's stress on the importance of economic and social rights,⁹⁷ and it is reflected in Cahill's stress on the centrality of the idea of the common good in Roman Catholic thinking on rights.⁹⁸ As will be developed further below, the participants criticize the existing understanding of the law for not adequately advancing the values of community and human solidarity.

4. Religious Means of Transmitting Ideas and Values on which Civil Rights Law Depends

A relatively incidental but nonetheless noteworthy thesis that some participants advance concerns religion's role in transmitting the ideas and values on which the civil rights law depends. Religion facilitates this transmission by means of religious language. In order to grasp this for the most part implicit thesis, it may be noted that participants often express ideas such as those of obligation and the human good, discussed above, by means of religious symbols and metaphors. Richard Neuhaus uses the symbols of the "ordering of creation" and the "two kingdoms,"⁹⁹ while Lisa Cahill speaks of humanity as the "image of God."¹⁰⁰ Brian Tierney refers to the symbol of the "mystical body of Christ,"¹⁰¹ and Robert Cover speaks of divine election and the "words of the Living God".¹⁰² In a somewhat less figurative, but still highly evocative way, Harold Berman similarly talks of "justification by faith";¹⁰³ Jude Dougherty describes the virtue of "pietas";¹⁰⁴ and John Noonan meditates on "martyrdom."¹⁰⁵

In such language, the participants underscore the peculiar role of religious symbols and images in transmitting moral values. The papers of historians Tierney, Berman, and Noonan are particularly interesting when read with a view to asking how religious symbols in each age have mediated ideas and concepts that have given rise to

96. *Final Panel Discussion*, *supra* note 24, at 230-31 (Remarks of H. Berman).

97. Cahill, *supra* note 24, at 88-93; Gewirth, *supra* note 23, at 138-43.

98. Cahill, *supra* note 24, at 75.

99. *Theological Perspectives*, *supra* note 24, at 100-107.

100. Cahill, *supra* note 24, at 75.

101. Tierney, *supra* note 24, at 164.

102. Cover, *supra* note 24, at 66-68.

103. Berman, *supra* note 16, at 180.

104. *Final Panel Discussion*, *supra* note 24, at 239.

105. Noonan, *supra* note 24, at 203 and 211-12.

growth in civil rights thinking.¹⁰⁶ Concern with this dimension of religion's role in grounding civil rights law may be incidental and largely implicit in the symposium materials, but it is analytically distinct and is not to be overlooked.

5. Religion and the Satisfaction of the Law's Sociological and Political Preconditions

A final thesis regarding religion as explanatory horizon of civil rights law concerns religion as organized human activity, rather than as field of abstract thought and belief. On this sociological sense, religion gives society some of its most important mediating institutions.¹⁰⁷ Professors Neuhaus, Berman, and Cover, among other participants, emphasize the significance of such religious mediating institutions for democratic government and associated political rights.¹⁰⁸

A review of the symposium texts reveals that the participants understand religious communities to fulfill such a mediating function in two distinct ways. First, within these communities visions of the human good are cultivated, moral values are preserved and transmitted, and human persons are cherished. In this manner, they equip their members to understand, exercise and respect rights.¹⁰⁹ Second, these communities relativize the state, even as they provisionally validate it. This relativization serves to protect the democratic state from falling away from its ideal into totalitarianism. One sees this latter function in Robert Cover's insight that particular religious communities reserve the right to stipulate the "conflicts of laws" rules governing priority between secular law and religious imperative;¹¹⁰ Harold Berman's insistence on conscience as a norm for evaluating the moral force of civil law;¹¹¹ and Brian Tierney's explanation of the medieval notion of the "freedom of the church."¹¹²

This final sociological sense in which religion grounds civil rights

106. Tierney, *supra* note 24, at 163-75; Berman, *supra* note 16, at 177-202; and Noonan, *supra* note 24, at 203-212.

107. For an example of study in this dimension of religion, see P. BERGER, *THE SACRED CANOPY: ELEMENTS OF A SOCIOLOGICAL OF RELIGION* 3-51 (1969).

108. *Theological Perspectives*, *supra* note 24, at 103-104 (Remarks of J. Neuhaus); *Historical Panel*, *supra* note 24, at 215-16 (Remarks of H. Berman); *Final Panel Discussion*, *supra* note 24, at 230-31 (Remarks of H. Berman); *Theological Perspectives*, *supra* note 24, at 100-101 and 103 (Remarks of R. Cover).

109. *E.g.*, *Theological Perspectives*, *supra* note 24, at 103-104 (Remarks of R. Neuhaus).

110. *Theological Perspectives*, *supra* note 24, at 106-107 (Remarks of R. Cover).

111. Berman, *supra* note 16, at 201-202.

112. Tierney, *supra* note 24, at 167.

law would have received more extensive development, if the social sciences had been included among the disciplines participating in the symposium. Further study ought to be given to this distinctively sociological dimension of the question, both in itself and in relation to the problem's philosophical and historical dimensions.

C. Religion as a Ground From Which to Criticize the Law

Most symposium participants assume that religion supports an affirmation of much of contemporary American civil rights law, but they also stress that religion must do more than simply affirm the law. They postulate that the religious horizon is one from which existing law ought to be criticized. Virtually every participant criticizes existing approaches to civil rights law from the vantage of moral or religious standards.

In the symposium texts, strands of such criticism converge around the need for greater emphasis on community, social solidarity, and obligation to others.¹¹³ Criticism is leveled both against the law's concrete provisions and its principled presuppositions or its lack of such presuppositions. Inasfar as John Rawls' "original position" version of the social contract idea serves as presupposition of contemporary interpretations of civil rights law, it is criticized, for example, by Richard Neuhaus as too individualistic.¹¹⁴ Alan Gewirth, criticizes the legal system for lacking a principled justification for its latter-day recognition of positive rights to certain minimum conditions of well being.¹¹⁵

Several scholars focus on a conscious middle step of analysis that facilitates religion's critical function. This step requires that the conceptual presuppositions of the framework of existing law be made explicit. Having been expressly stated, they can be criticized systematically by reference to relevant religious or moral horizons. In

113. *Final Panel Discussion*, *supra* note 24, at 230-31 (Remarks of H. Berman) (stressing importance of community); Cahill, *supra* note 24, at 88-90 (stressing importance of community); Cover, *supra* note 24, at 69-74 (stressing importance of community and obligation); Dougherty, *supra* note 24, at 121-23 (stressing importance of obligation and community of values); Gewirth, *supra* note 23, at 138-41 (stressing societal obligation); Neuhaus, *supra* note 5, at 53-54 (stressing importance of obligation); *Theological Perspectives*, *supra* note 24, at 103-104 (stressing importance of community) (Remarks of J. Neuhaus); Noonan, *supra* note 24, at 205-206 and 209-210 (stressing obligation to respect conscience of others); and *Final Panel Discussion*, *supra* note 24, at 237-38 (stressing obligation derived from revelation) (Remarks of J. Noonan).

114. Neuhaus, *supra* note 5, at 58; *Theological Perspectives*, *supra* note 24, at 98-100.

115. Gewirth, *supra* note 23, at 126 (calling the need for a moral warrant "especially pressing").

not undertaking this step, a thinker risks baptising structures that are not truly compatible with his or her religious or moral standards.

Lisa Cahill stresses the need for this intermediate stage of analysis. To establish her point, she cites deficiencies in the work of John Courtney Murray, S.J., and some of his followers. In Cahill's view, these theologians adopt the categories of the United States Constitution as basic tools of analysis, without adequately measuring them against the teachings of the Second Vatican Council, recent papal social encyclicals, or the *Summa* of St. Thomas.¹¹⁶

Robert Cover carries out the middle analytical step proposed by Cahill, although he employs the concept of "myth" in addition to more discursive ideas. In an intermediate stage of his inquiry, Cover makes explicit that the civil rights law presupposes a myth of "social contract".¹¹⁷ He further shows that symbolically this myth gives primacy to values of autonomy, individualism, and freedom. In its relevant historical context, he considers that it has assisted in projecting human personality in hostile milieus and has tended to counter totalitarian tendencies of centralized states.¹¹⁸

Cover then exposes deficiencies in this mythic narrative by contrasting it with quite different narrative presuppositions of Judaism. According to Cover, Judaism presupposes a myth of "divine election", "covenant," and "lawgiving."¹¹⁹ Symbolically, this latter myth elevates the values of radical heteronomy, social solidarity, and obligation. In its historical setting it has supported group identity and encouraged mutual support under the conditions of the Diaspora.¹²⁰

As Cover shows, the Jewish story generates criteria for criticizing the secular myth of social contract and the legal structure built upon it. In the Jewish myth, the heteronomy of the law is liberation from "vain ends" or meaningless and futile activity.¹²¹ The freedom secured by the secular social contract myth, as interpreted for instance by Rawls, provides no protection from this essential vanity.¹²² Judaism validates the values of social solidarity and community, but the secular story fails to affirm them.¹²³ Even if one accepts the individualism of the secular myth, the satisfaction of individual needs remains

116. Cahill, *supra* note 24, at 84-85.

117. Cover, *supra* note 24, at 65-67.

118. *Id.* at 69.

119. *Id.* at 66.

120. *Id.* at 68-69.

121. *Id.* at 69-70 (citing Maimonides).

122. *Theological Perspectives*, *supra* note 24, at 101 (Remarks of R. Cover.).

123. Cover, *supra* note 24, at 68-69.

at risk in any legal system based on the myth, since the myth, in contradistinction to that of Judaism, lacks a distributional premise. The Jewish myth provides the missing premise by positing the obligation of neighbor.¹²⁴

Each participant's application of religious and moral principles has a critical edge, but some appear *in principle* to adopt a more critical stance than others. At the more critical end of the range, Cover allows only a strictly contingent affirmation of the state, since he views the state as a form of sanctioned violence that always remains morally ambiguous.¹²⁵ Furthermore, he advocates a hermeneutic of suspicion that is aimed at privilege.¹²⁶ Not, perhaps, as radical as Cover, Richard Neuhaus, nonetheless, appears inclined towards criticism because of his stress on transcendence.¹²⁷ John Noonan's emphasis on religious liberty may have similar ramifications.¹²⁸

Philosophers Alan Gewirth and Jude Dougherty are at the other pole. Gewirth emphasizes reason's ability to arrive at the moral requirements of a just state.¹²⁹ He recognizes that setbacks may occur, but does not countenance any ground to suppose an actual state could not be brought into approximate harmony with these moral requirements.¹³⁰ Although Dougherty criticizes the existing order sharply, he envisions a harmonious interaction of religion and the civil order as an attainable ideal.¹³¹ Lisa Cahill, too, seems to belong at this pole, if not with respect to her view of the state, then with respect to the harmony she perceives possible between moral-religious imperatives and culture.¹³² Since Gewirth, Dougherty, and Cahill (at least in these present papers) rely on philosophical categories, their thought is, perhaps, less informed by theological categories of fall and human

124. *Id.* at 71-72.

125. *Id.* at 69 (referring to the "nation state with its almost unique mastery of violence over extensive territories"); *Theological Perspectives*, *supra* note 24, at 106 (Remarks of R. Cover) (referring to what we "conceive to be the rightful granting of physical power, violence—to the organs of government").

126. Cover, *supra* note 24, at 73-74; *Theological Perspectives*, *supra* note 24, at 101 (Remarks of R. Cover); *Final Panel Discussion*, *supra* note 24, at 235 (Remarks of R. Cover).

127. Neuhaus, *supra* note 5, at 53-54; *Theological Perspectives*, *supra* note 24, at 96-98 (Remarks of R. Neuhaus).

128. Noonan, *supra* note 24, at 209-12.

129. Gewirth, *supra* note 23, at 135-36.

130. *Philosophical Perspectives*, *supra* note 24, at 160 (Remarks of A. Gewirth).

131. Dougherty, *supra* note 24, at 122; *Final Panel Discussion*, *supra* note 24, at 239-40 (Remarks of J. Dougherty).

132. *Theological Perspectives*, *supra* note 24, at 101-102 (Remarks of L. Cahill); *Final Panel Discussion*, *supra* note 24, at 231-32 (Remarks of L. Cahill).

sinfulness than is that of certain of the participants assuming more critical stances.

The religious grounding of law has at some points in history absolutized the status quo, but no such implication is to be found in the symposium texts. These attribute to religion a critical as well as an affirming function relative to the legal order.

D. The Need for Mediation Between Law and Religion

Nearly all participants consider religion a ground of civil rights law, but none assert that religion can function as such, without some form of mediation. On a theoretical plane, they inquire into philosophy as bridge between law and religion. With respect to the sphere of practice, they explore elements of politics that may be needed in order to mediate the divide.

Regardless of the degree of importance they grant religion, all assign some mediating role to philosophical reason, although they disagree on how extensive and autonomous this role should be. Cahill and Dougherty, coming out of the Roman Catholic tradition, assign philosophy a far-reaching and relatively autonomous role.¹³³ Both agree that religion provides warrants for endorsing philosophical arguments theoretically accessible to everyone.¹³⁴ Their position might lead them, for instance, to adopt the moral philosophical thought of Alan Gewirth as a basis for common public action.¹³⁵ In her paper, Cahill employs Aristotelian/Thomist philosophical categories logically independent of Christian revelation.¹³⁶ As it happens, these categories have points of contact with Gewirth's system.

While granting philosophy a mediating role, other participants do not allow it the autonomy that is allowed by Professors Cahill, Dougherty, or Gewirth. John Noonan, for instance, expresses the conviction that moral philosophy ultimately depends for its insights on religion.¹³⁷ When Brian Tierney inquires whether Alan Gewirth's moral philosophy presupposes a Judeo-Christian anthropology, he asks whether Gewirth's reason-based morality implicitly depends on residual religious postulates.¹³⁸ In treating the Reformation, Harold

133. Cahill, *supra* note 24, at 75; *Final Panel Discussion*, *supra* note 24, at 236-37 (Remarks of J. Dougherty).

134. *Id.*

135. Gewirth, *supra* note 23, at 125-47; *see also Final Panel Discussion*, *supra* note 24, at 236 (Remarks of J. Dougherty).

136. Cahill, *supra* note 24, at 75-76 and 80-81.

137. *Final Panel Discussion*, *supra* note 24, at 237-38 (Remarks of J. Noonan).

138. *Philosophical Perspectives*, *supra* note 25, at 152-53 (Remarks of B. Tierney).

Berman traces a direct influence of theological concepts on the law, and in this process philosophical reasoning remains of ancillary importance.¹³⁹ Although he does not assert that moral philosophy in principle depends on religion, Neuhaus concludes that in practice most people should not be required to separate moral philosophy from theology.¹⁴⁰ Cover rejects an autonomous philosophy as the source of common public language for use among disparate communities, proposing instead a model of radical decentralization and reciprocal self-disclosure.¹⁴¹

As an aspect of the inquiry into philosophy's autonomy, the participants explore the question of what *a priori* restrictions religion might place on the choice of a mediating philosophical system. In pursuing the question, they focus on the use of Marxism by some contemporary Christian theologians. Neither Alan Gewirth nor Brian Tierney discern any reason why Marxist categories cannot, in principle, be theologically employed.¹⁴² Tierney compares current alarm over liberation theology's use of Marxist categories to condemnations by St. Thomas Aquinas' use of Aristotelian categories in the thirteenth century.¹⁴³

Lisa Cahill affirms a transformative theological methodology that permits some liberation theologians a wide-ranging assimilation of Marxism. This methodology is one of correlation of Gospel "scenes" with Marxist categories within the context of the situation.¹⁴⁴ Richard Neuhaus, in contrast to Cahill, questions the validity of liberation theology's attempt to integrate Marxism. Citing in particular the work of Juan Luis Segundo, he alleges that the use of Marxism seriously distorts Christian ecclesiology.¹⁴⁵

With respect to politics, the participants explore the mediation required between religion and lawmaking. They seek to name the structures that will allow diverse religious and nonreligious perspectives to reach the consensus necessary to enact laws. Richard Neuhaus proposes that attempts to reach political consensus should be premised on underlying agreement that the purpose of law is to

139. Berman, *supra* note 16, at 186-202.

140. *Theological Perspectives*, *supra* note 24, at 96-98 (Remarks of R. Neuhaus).

141. Cover, *supra* note 24, at 68-69; *Theological Perspectives*, note 24, at 100-103 (Remarks of R. Cover).

142. *Final Panel Discussion*, *supra* note 24, at 232-33 (Remarks of B. Tierney) and at 233 (Remarks of A. Gewirth).

143. *Id.* at 232-33 (Remarks of B. Tierney).

144. *Id.* at 231-32 (Remarks of L. Cahill).

145. *Id.* at 233 (Remarks of R. Neuhaus).

achieve the human good. Political argument, he says, is to be conceived as disagreement on what particular vision of the good should be pursued.¹⁴⁶

While most, if not all of the participants' approaches harmonize with Neuhaus' proposal, there is disagreement about the language, concepts, and categories appropriate for political discussion. Lisa Cahill favors the use of a philosophical rather than specifically religious vocabulary.¹⁴⁷ Robert Cover, by contrast, favors an interchange of self-disclosure by religious communities. He is wary of "neutral" philosophical vocabulary because of the danger that it may serve the covert interests of dominant groups.¹⁴⁸

Richard Neuhaus supports the use of explicitly religious categories in public discussion, on the ground that most Americans naturally conceive of the good in religious terms.¹⁴⁹ To a certain extent, then, Cover and Neuhaus are in agreement, although they have different opinions on what Neuhaus terms the present resurgence of religion in American public life. Neuhaus essentially applauds this resurgence, but Cover has serious reservations about the movement's agenda.¹⁵⁰ Both Alan Gewirth and Jude Dougherty disagree with Neuhaus in principle with respect to direct religious involvement in the public forum, cautioning of the divisive and at times morally retrograde effect that unmediated religious involvement can have on political debate.¹⁵¹

The participants agree that both conceptual and practical mediation is needed between religion and the law. They disagree about the form and extent of such required mediation, and the limited frame of the symposium permitted a beginning exploration of these points of difference.

146. *Theological Perspectives*, *supra* note 24, at 98-100 (Remarks of R. Neuhaus).

147. Cahill, *supra* note 24, at 75; *Theological Perspectives*, *supra* note 24, at 101-102 (Remarks of L. Cahill). Cahill recommends modifying traditional Thomist political categories precisely to give greater importance to consensus seeking as a critical phase in the political process. Cahill, *supra* note 24, at 76.

148. Cover, *supra* note 24, at 68-69; *Theological Perspectives*, *supra* note 24, at 100-103 (Remarks of R. Cover); and *Final Panel Discussion*, *supra* note 24, at 235 (Remarks of R. Cover).

149. *Theological Perspectives*, *supra* note 24, at 96-98 (Remarks of R. Neuhaus).

150. Neuhaus, *supra* note 5, at 61; *Theological Perspectives*, *supra* note 24, at 95 (Remarks of R. Neuhaus) and at 95 (Remarks of R. Cover.)

151. *Final Panel Discussion*, *supra* note 24, at 235-36 (Remarks of A. Gewirth) and at 236-37 (Remarks of J. Dougherty).

E. The Special Problem of Religious Liberty

John Noonan traces the origin of the concept of religious liberty to religion, but he does not consider the relation between religion and the right of religious liberty free of tension. In fact, in this paper, Noonan focuses primarily on Christianity's habit of *intolerance* during most of its history. His meditation on the condemnation of St. Joan of Arc by the Bishop of Beauvais seeks to expose the theological, moral, and jurisprudential significance of this intolerance.¹⁵²

Noonan sees in Joan of Arc's martyrdom a warning regarding all conceptual formulas intended for the good ordering of society, even when these are purportedly grounded in religion.¹⁵³ Such formulas are not, he alleges, subject to validation through purely abstract and theoretical considerations, but must be assessed by their effect on human beings. Against this measure, Noonan exposes the inhumanity of the medieval ecclesial framework that allowed the punishment of heresy by the secular arm.¹⁵⁴

Noonan's paper elicited discussion about the causes of pre-modern religious intolerance. According to Noonan and others, these causes include elements in the thought of St. Augustine and St. Thomas, as well as in the church's earlier understanding of its role in society.¹⁵⁵ Noonan's paper triggered, as well, a discussion of the principles that underlie religion's contemporary affirmation of religious freedom.¹⁵⁶ Noonan and Brian Tierney conclude that such principles are in the Gospel, interpreted in the light of experience.¹⁵⁷ Alan Gewirth questions whether this combination of Gospel and experience is adequate support for the modern position, suggesting that additional work toward a philosophical justification is necessary.¹⁵⁸

The problem of religious liberty raised by Noonan is, I believe, the decisive issue of the symposium. The participants generally affirm the goal of ordering civil rights law to the human good, as this good is understood and fostered by religion. They also affirm noncoercion in matters of religious belief. From the perspectives of the nonreligious

152. Noonan, *supra* note 24, at 203-212.

153. *Id.* at 205 and 212.

154. *Id.* at 212.

155. Noonan, *supra* note 24, at 203-206; *Historical Perspectives*, *supra* note 25, at 215.

156. Noonan, *supra* note 24, at 210-212; *Historical Perspectives*, *supra* note 25, at 213-24 (Remarks of B. Tierney, H. Berman, and J. Noonan); and *Final Panel Discussion*, *supra* note 24, at 238 (Remarks of A. Gewirth.)

157. Noonan, *supra* note 24, at 212; *Historical Perspectives*, *supra* note 25, at 221 (Remarks of J. Noonan) and at 222 (Remarks of B. Tierney).

158. *Historical Perspectives*, *supra* note 25, at 220-21 (Remarks of A. Gewirth).

and of members of powerless religions, the attractiveness of the former goal depends on how strong a *principled* basis underlies the latter. As Gewirth observes, one must consider cases of conflict between the two goals in order to test the relative strength of the principle underlying the latter.¹⁵⁹

If the principle of freedom of religion is really absolute, a compromise of the *telos* of the good appears to be necessary in conflict situations, with the consequence that society is pushed in the direction of the radical pluralism on the good that characterizes the Rawlsian framework. If the principle of religious freedom, on the other hand, rules out no more than direct assaults on belief, society implicitly accepts far-ranging *indirect* coercion on religious belief through its allocation of resources in pursuit of the good. If the principle of religious freedom is to have meaningful religious foundations, this dilemma needs resolution. Principled justification is needed for the indirect restriction of autonomy and religious freedom implicit in ordering society according to substantive visions of the good, but this justification must be one which sets meaningful limits on even indirect coercion.

CONCLUSIONS

My reflection on the Symposium on the Religious Foundations of Civil Rights Law began with the mention of a political controversy about civil rights and religion that illustrated division and uncertainty in the current American understanding of civil rights law. The symposium proves that ordered inquiry into the relation of religion and civil rights assists in restoring the unity and direction missing from the public understanding of civil rights.

As the symposium establishes, the crisis apparent in the Nation's understanding of civil rights law is related to society's deeper failure to acknowledge the need for moral legitimization of its system of legal rights. This is a failure that seems to stem from contingent historical developments in both moral philosophy and popular ideology. These developments have interfered with the moral validation of law by severing the law's connection to moral or religious values embodied in inherited societal institutions.

As the symposium shows, the religious dimension of human experience remains, nonetheless, a horizon intrinsically related to the moral legitimization of law. Religion animates communities of moral value that serve both to legitimize and relativize the law's power. In

159. *Id.* at 220.

this regard, such communities supply grounding for the recognition of human rights. Religion also fulfills its grounding function in several other ways. It offers language that effectively transmits moral values. It preserves visions of the human good that can be drawn upon by the political community as it decides on the purpose and direction of the law. In the concept of God, it has a transcendent source of obligation that allows it to endorse, and perhaps even rationally to justify the law's obligatory character.

The contemporary public discussion appears to be receptive neither to the need for meaningful moral legitimization of law, nor to religion's value for accomplishing this legitimization. This might change were the public discussion better informed about the common history shared by religion and law that has been brought out in the present discussion. Understanding of the religious origin of important civil rights concepts might stimulate fruitful crosscurrents in the discussion, even while more strictly theoretical problems remained open.

If the public discussion is ever adequately to assimilate the religious horizon, greater theoretical consensus is necessary regarding the concepts that should mediate between religion and politics under contemporary circumstances. Such concepts would need to support the religious freedom of the individual, the autonomy of politics, and the critical independence of religion, while at the same time allowing religion to serve as the law's foundation. Such theoretical consensus awaits not merely a conceptual breakthrough, but the moral conversion of society from prevailing privatism to a genuine commitment to the public good.

APPENDIX

SMALL GROUP SEMINARS

1. Religion and Historical Development of the Concept of Rights

Discussion Question: What general conclusions are possible respecting the role of religion in the development of the concept of rights during the pre-modern era? To the extent that such generalizations are possible, what analogies, if any, can be drawn between the historical role of religion, and religion's appropriate role in our present understanding of civil rights?

Respondents: Brian Tierney and Harold Berman

2. The Meaning of Civil Rights: Dialogue Among American Religious Traditions

Discussion Question: To what extent do the traditions of Judaism, Protestantism, and Catholicism share a common concept of moral duty for the welfare of the neighbor? To the degree that these traditions recognize such a duty, how, if at all, does such recognition serve as a basis for the concept of civil rights? What factors have led the traditions to differ on concrete proposals for the legal recognition of rights?

Respondents: Lisa Cahill and Robert Cover

3. Religion, Morality, and the Legal Recognition of Rights

Discussion Question: To what extent, if any, is the concept of civil rights grounded in either religion or morality? Insofar as religion and morality constitute a basis for civil rights, how are they related and unrelated to each other? In what way does religion, in contrast to morality, play a distinctive role as a basis for civil rights?

Respondent: Alan Gewirth

4. Religion and the Human Person as a Bearer of Rights

Discussion Question: What stresses does the American legal framework of rights place on the concept of personhood? How does religion give content to the notion of personhood? How does such religious content help to withstand these law-related stresses? To what extent are the legal and the religious concepts of personhood in harmony? To what extent are they in conflict?

Respondent: Richard John Neuhaus

5. Religion, Civil Rights, and Natural Law

Discussion Question: What is the relationship between religion and natural law philosophy; and, in turn, what has been the rule of natural law philosophy in the development of civil rights in the American context? To what extent does natural law remain valid as an approach to thinking about civil rights?

Respondents: John Noonan and Jude Dougherty

